

LOWELL L. PATTEN

IBLA 81-216

Decided February 10, 1981

Appeal from the decision of the Wyoming State Office, Bureau of Land Management, declaring various mining claims abandoned and void. W MC 169503 and W MC 169504.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on Federal lands on or before Oct. 21, 1976, must file with BLM evidence of annual assessment work or a notice of intention to hold the mining claim on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the year of recording with BLM, whichever is sooner. This requirement is mandatory, and failure to file conclusively constitutes abandonment of the claim by the owner.

2. Notice: Generally--Regulations: Generally--Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

3. Administrative Authority: Generally--Constitutional Law:  
Generally--Statutes

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not the Federal Land Policy and Management Act of 1976 is constitutional.

APPEARANCES: Lowell L. Patten, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Lowell L. Patten has appealed the decision of the Wyoming State Office, Bureau of Land Management (BLM), declaring the Nelco Nos. 1 and 2 placer mining claims, W MC 169503 and W MC 169504, among others, abandoned and void for failure to file evidence of annual assessment work on the claims on or before October 22, 1979.

In his statement of reasons, appellant states that he did the 1979 assessment work and filed an affidavit of annual labor in the county recorder's office but misunderstood the requirements and failed to file a copy with BLM. In addition, he contends that the applicable Departmental regulations should be declared void because they constitute an annual hazard to a property right without reasonable remedy or means to correct minor errors and omissions. He argues that the voiding of his claims for failure to file constitutes the taking of a property right without due process and is unconstitutional.

[1] Section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), requires the owner of an unpatented mining claim located prior to October 21, 1976, to file evidence of annual assessment work for the claim with BLM within the 3-year period following that date and prior to December 31 of each year thereafter. The corresponding Departmental regulation 43 CFR 3833.2-1(a) reads:

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 21, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), mandates that failure to so file be considered conclusively to constitute abandonment of a claim.

[2] The fact that appellant may have misunderstood the recordation requirements, while unfortunate, does not excuse him from compliance. Those who deal with the Government are presumed to have knowledge of the law and the regulations duly adopted pursuant thereto. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978). The responsibility for complying with the recordation requirements rested with appellant. This Board has no authority under the statute to excuse lack of compliance. Glen J. McCrorey, 46 IBLA 355 (1980).

[3] Appellant's argument that the recordation requirements are unconstitutional may not be considered by this Board. The Department of the Interior, as an agency of the executive branch of the Federal Government, is not a proper forum to consider the constitutionality of the recordation provisions of FLPMA, *supra*. Alice E. Deetz, 48 IBLA 59 (1980). In addition the regulations promulgated pursuant to these provisions have been upheld. Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (1979), *appeal pending*.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques

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Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

